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Supreme Court, U.S.
FILED
APR 14 1998
OFFICE OF THE CLERK

No. 981672

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

ROBERT E. MEADE,

Petitioner,

vs.

PEP BOYS MANNY MOE & JACK, INC., ET AL,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

ROBERT E. MEADE
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38 pp

QUESTIONS PRESENTED

Whether the trial court below abuse its discretion when it forced the injured party into accepting a settlement which did not justly compensate him for his injury?

Whether the trial court below erred in dismissing a case because the claimant failed to personally appear for trial when his attorney was present and ready to proceed with the trial?

PARTIES TO THE PROCEEDING

The parties to the proceeding below were the petitioner and plaintiff Robert E. Meade, and the respondents and defendants Peps Boys, Manny, Moe & Jack, et al. This includes Pep Boys, Manny, Moe & Jack and their insurer, Travelers Indemnity Company of Illinois (Manor Care).

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
APPENDIX	iv
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION . .	4
CONCLUSION	12

APPENDIX

Page

Order of the Court of Appeals, Denying Reconsideration, Dated January 14, 1999 . . . . . A

Order of the Court of Appeals, Dated November 13, 1998 . . . . . B

Order of the Special Court of Apeals, Denying Reconsideration, Dated September 7, 1998 C

Unreported Opinion of the Court of Special Appeals, Dated June 8, 1998 . . . . . D

Order of the Circuit Court of Maryland, Denying Reconsideration, Dated May 27, 1997 . . . . . E

Order of the Circuit Court of Maryland, Granting Motion To Dismiss, Dated January 14, 1997 . . . . . F

Order of the Workers' Compensation Commission Disallowing claim, Dated March 16, 1994 . . . . . G

TABLE OF AUTHORITIES

Page

Cases

Abell v. Albert F. Goetz, Inc.,
226 A 2d 253,
245 Md. 433 5

Allen v. Great Atlantic & Pacific Tea Co., Inc.,
48 A.D. 2d 984,
369 N.Y.S. 2d 572 (1975) 6

Attorney General v. Johnson,
282 Md. 274,
439 U.S. 805 (1978) 8

Carlisle v. County of Nassau,
408 N.Y.S. 2d at 116 7

Cavanaugh v. Cardamone,
383 N.W. 2d 601,
603 (Mich. App. 1985) 7

Chapman v. Avco Financial Services Leasing Company,
387 S.E. 2d 391,
392 (Ga. 1989) 7

Eberle v. Baltimore County,
103 Md. App. 160 (1995)
652 A 2d 1175..... 6

Estate of Letches,
398 N.E. 2d at 1047 and n.5 7

Hillig v. CIR,
916 F. 2d 171, 173-74 (4th Cir 1990).....9

Kothe v. Smith,
771 F 2d 667 (2d. Cir. 1995) 9

Mitchell v. Iowa Cab Co.,
31 A.D. 2d 519,
294 N.Y.S. 2d 749 8

Richardson v. Home Mutual Ins. Co.,
235 Life Md. 252,
201 A 2d 390 (1964).....5

Rueth v. Idaho,
596 P 2d at 78-79..... 7

Schunk v. Schunk,
446 N.Y.S. 2d 672 8

S.E.C. v. First Houston Capital Resources Fund, Inc.,
979 F 2d 382, 383 10

Vines v. Vines,
357 So. 2d at 246 7

Wesco Elec. Co. v. Shook,
143 Colo. 382,
353 P 2d 743..... 6

Williams v. Bolding,
452 N.E. 2d 1346,
1348 (Ohio App. 1982) 7

Williams v. Williams,
7 Gill 302, at 304 10

Wolff v. Laverne Inc.,
17 A.D. 2d 213,
233 N.Y.S. 2d 555 9

Zdravkovich v. Bell Atlantic-Trico Leasing Corp.,
323 Md. 200, 208 (1991) 10

Statute

15 U.S.C.A. 16 (e) 8

PETITION FOR WRIT OF CERTIORARI

Petitioner Robert E. Meade respectfully requests that a writ of certiorari issue to review the order of the Court of Appeals of Maryland.

OPINIONS BELOW

The Court of Appeals of Maryland issued an Order denying reconsideration of petition and is reprinted herein on page A. The Court of Appeals of Maryland issued an Order denying petition and is reprinted herein on page B. The Court of Special Appeals of Maryland issued an Order denying reconsideration of decision to affirm and is reprinted herein on page C. The Unreported Opinion of the Court of Special Appeals to affirm is reprinted herein on page D. The Circuit Court of Maryland for Prince George's County issued an Order denying reconsideration of decision to dismiss and is reprinted herein on page E. The Circuit Court of Maryland for Prince George's County issued an Order granting Motion To Dismiss and is reprinted herein on page F. The Workers' Compensation Commission issued an Order disallowing claim and is reprinted herein on page G.

JURISDICTION

The Order of the Court of Appeals of Maryland denying the petition was entered on November 13, 1998. The reconsideration of the Order of the Court of Appeals of Maryland was denied on January 14, 1999. The jurisdiction of the United States Supreme Court to review the Order is invoked under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

Robert E. Meade filed a claim with the Workmen's Compensation Commission for a back injury sustained while in the course of his employment. On September 12, 1993, he slipped off a pallet jack when he and three other employees were lifting an engine into a customer's van and he felt a sharp pain in his back. The Commission denied the claim. In 1994, Meade, feeling aggrieved of the decision of the Workmen's Compensation Commission, filed a petition for judicial review in the Circuit Court for Prince George's County.

On September 5, 1994, Mr. Stephen Kiefert, Meade's former counsel, Mr. Stan Haynes, respondents' counsel, and Judge Sothoron signed a proposed settlement offer which was typed as a court order without Meade's knowledge or approval. Meade was told that Haynes and his client, Jean Miller of Travelers Insurance Co., encouraged this settlement offer, even though , they knew that Kiefert could not finalize a settlement without Meade's approval. Meade did not accept the settlement offer that had been signed because it did not include leaving his back injury open, since more testing, more treatment, and additional prescriptions for nerve damage were needed. It also would have required Meade to release Pep Boys and its insurer from civil rights claims which Meade was unable to do since Meade had already negotiated agreements with other attorneys.

Trial was scheduled for September 9, 1996. Kiefert instructed Meade to call him at the Court library to see if his presence was required so he could travel to the courthouse. If a continuance was denied, Kiefert would have proceeded by asking for sanction hearings on subpoena information and interrogatories. The Court had not ruled on Kiefert's Motion for Sanctions, which he had previously placed before the Court. He would also argue for a twelve person jury instead

of a six person jury, and present the Court with a list of potential witnesses which needed to be scheduled for the proposed three day trial. On suggestion of Defendants' counsel, another judge was sought out to hear the case that day. Judge Sherrie Krauser proceeded and denied Kiefert's request for a continuance but did not begin the trial. Instead of allowing Kiefert to start, as he had prepared, Judge Krauser chose to proceed with a discussion of the settlement offer which had been rejected by Meade. She emphasized the reasonableness of the settlement and was unmoved when Kiefert disagreed with her. She unexpectedly ruled that it would be put on a 30 day disposition for a settlement to be reached and signed by Meade. When 30 days had passed, the employer/insurer, having failed to force Meade to accept the settlement, moved to dismiss Meade's case on the basis that he did not appear for trial.

On January 9, 1997, a hearing was held. Meade believed the issue was the settlement offer of September 5, 1996 and he would be allowed to speak as to why he had rejected the settlement offer and present his own settlement offer. Kiefert told Meade, prior to this hearing, that this would be an informal hearing. Also, Judge Krauser's office told Meade by telephone that it was going to be an informal hearing when Meade spoke to Judge Krauser and her legal assistant at the end of November 1997. When Meade tried to interrupt the proceedings to question what was going on, Judge Krauser cut him off, did not let him speak further, pointed out that he was represented, and threatened him with contempt. Because the parties had failed to resolve what the Court requested, Judge Krauser took it upon herself to resolve the issues of the rejected settlement by finding against Meade on the issue of the prescription on the basis of the judge's own experience with allergy medicine and against Meade on the issue of front pay because she reasoned, Meade's failure to appear on September 9, 1996 had waived any right he had to future benefits. Since the

original settlement remained unchanged, Meade rejected the settlement since it would not fully compensate him for additional medical expenses resulting from the injury. Also, it still required Meade to release Pep Boys and its insurer from civil rights claims. Judge Krauser forced Meade to choose between either accepting the settlement offer of September 5, 1996, which he had already rejected on September 6, 1996 or have his case dismissed. Judge Krauser did not once state to Meade why this was occurring, leaving Meade to think the reason was because of him not accepting the settlement offer of September 5, 1996. Meade only found out why his case was dismissed on May 22, 1997. As a result of Meade not accepting the settlement, Judge Krauser dismissed the case.

On May 22, 1997, Meade appeared before Judge Krauser on his Motion to Reconsider, which he filed pro se. She explained for the first time that she had imposed a sanction on Meade for not being present on September 9, 1996. She stated that she had sanctioned him on January 9, 1997 to accept the settlement offer or have his case dismissed. Judge Krauser determined that unless Meade immediately produced an affidavit from his employer verifying that he needed to be absent from the September 9, 1996 hearing, she would grant no relief, even though the Court had never before requested an affidavit from Meade. When Meade did not produce the affidavit, Judge Krauser was unwilling to hear any evidence Meade might present as his reasons for not being present on September 9, 1996. Judge Krauser denied the Motion To Reconsider.

REASONS FOR GRANTING THE PETITION

Meade appealed to the circuit court from his denial by the Workmen's Compensation Commission of a back injury claim he filed. Appeals from the Commission to the

circuit court are conducted essentially as trials de novo. "Maryland, in common with sixteen other states, authorizes a review of the facts as well as the law. Our statutes contemplates a trial which essentially is de novo". Richardson v. Home Mutual Ins. Co. 235 Life Md. 252, 201 A 2d 390 (1964). The burden is upon the appellant to overcome the presumption that the decision of the Commission was correct.

> "Presumption of correctness of Commission's decision may be overcome by submitting new evidence, by relying on all or a part of record before Workmen's Compensation Commission, by argument as to probative value of evidence and by argument as to the credibility of witnesses, and all of such matters are legitimate elements of a trial de novo which counsel may exercise to fullest legitimate means to overcome existing presumption". Abell v. Albert F. Goetz, Inc. 226 A 2d 253, 245 Md. 433.

Meade's counsel, Kiefert, had to prove that the Commission's decision was incorrect. Judge Krauser should have given Kiefert the opportunity to meet his burden of proof before she reached any decision in this case. Judge Krauser failed to recognize that Kiefert never said that he would not go forward with the case in Meade's absence, and that Kiefert had both fact and expert witnesses he could have presented to the Court if he had been given the opportunity. Kiefert was not allowed by the Court to proceed. There are numerous claims which are denied by the Workmen's Compensation Commission and yet have a recourse, file for judicial review in the circuit courts. By Maryland Code, Article 101, Section 56, "The court shall determine whether the Commission has justly considered all the facts concerning the injury". Because the appeal is de novo, the jury is the fact-finder. The jury is free to review the record and judge the credibility of the witnesses. It has been known to reach entirely opposite conclusions which would justly

compensate the injured employee as in Wesco Elec. Co. v. Shook, 143 Colo. 382, 353 P 2d 743. The court held that it was improper for compensation to be denied, and benefits were awarded. Also, as in Allen v. Great Atlantic & Pacific Tea Co., Inc. 48 A.D. 2d 984, 369 N.Y.S. 2d 572 (1975) where the court reversed the denial of benefits. Judge Krauser should have allowed Meade to have a trial by jury, which he had asked for from the beginning of his case. Kiefert would have been able to provide legally sufficient evidence to meet his burden of proof and have the jury decide his case. He would have proven that Meade did in fact sustain a back injury at Pep Boys and it would have been clear that Meade definitely falls into the Maryland Workmen's Compensation Act which provides benefits to persons who suffer "accidental injury that arises out of and in the course of employment". The circuit court did not perform its duty in determining whether the Commission's decision was supported by substantial evidence. "When reviewing factual findings of administrative agencies, it is court's duty to determine whether agency's decision was supported by substantial evidence". Eberle v. Baltimore County 103 Md. App 160 (1995) 652 A 2d 1175. Instead, the court prevented the case from ever being heard by dismissing it. The court's decision infringed the statutory recourse one has and denied Meade his day in court. The Supreme Court should allow Meade to have the statutory recourse that other injured parties have.

This court needs to resolve some issues that have been raised by this petition. There is no case law, statute or rule of court which permits a trial court to dismiss a case simply because the plaintiff is not physically present when the case was called but his attorney was present and ready to proceed with trial. Rules of court that permit a judgment by default against a defendant who fails to defend, Md. Rule 3-509(a), or dismissal for a plaintiff's failure to show a willingness to

prosecute after one year following the last docket entry, Md. Rule2-507(c), are simply not applicable to the case of a plaintiff who is represented by counsel but who fails to appear when the case was called. No statute deals with this situation, and there is no Maryland case law which approves a trial court's decision to dismiss a case in these circumstances. The trial court erred in concluding that Meade's failure to be personally present when his case was called either required or permitted the court to dismiss the case. After its decision to deny Kiefert's request for a continuance, the court should have begun proceeding on the outstanding pretrial motions, impaneled a jury, and proceeded with trial. It is clear that a party has a right to voluntarily absent themselves from trial, and be represented solely by counsel without dismissal of their case, and that trial may proceed in that party's absence. Chapman v. Avco Financial Services Leasing Company, 387 S.E. 2d 391, 392 (Ga. 1989); Cavanaugh v. Cardamone, 383 N.W. 2d 601, 603 (Mich. App. 1985); Williams v. Bolding, 452 N.E. 2d 1346, 1348 (Ohio App. 1982); Estate of Letches, 398 N.E. 2d at 1047 and n.5; Carlisle v. County of Nassau, 408 N.Y.S. 2d at 116; Vines v. Vines, 357 So. 2d at 246; Rueth v. Idaho, 596 P 2d at 78-79.

The Supreme Court must evaluate the role of the lower courts in settling a case. There are numerous cases where the litigants are offered pretrial settlements. Each litigant must determine if the settlement is right for him and be the only one that can make the decision whether to accept a settlement offer. A litigant must not be denied this right and be forced by a judge to accept a settlement offer, which does not fairly compensate him, or have his case dismissed. Other injured employees will be affected because of the impact it will have on their legal rights.

> "Under Maryland law, a trial court does not have the plenary power to force parties to engage in mandatory, binding alternative dispute

> resolution, no matter how desirable the court might consider settlement to be". Attorney General v. Johnson, 282 Md. 274, 439 U.S. 805 (1978).

Yet in Meade's case, the court took it upon itself to resolve what the court must have considered to be minor differences standing in the way of settlement. It found against Meade on the issue of the prescriptions on the basis of the judge's own experience with allergy medicine and against Meade on any right he had to future benefits. The law is clear that a lawyer has no implied authority to settle a lawsuit on behalf of his client. A judge should be bound by the same law. The judge in Meade's case forced him into accepting a settlement offer or have his case dismissed. This settlement dispute should have been solely in the hands of the parties. Unlike in certain special situations in which the trial court is required by statute or rule to approve and find that the settlement is fair. The three most prevalent examples of this are class action settlements, shareholder suit settlements, and compromises of claims in bankruptcy court. 15 U.S.C.A. 16(e) (West Supp.1979).

The Supreme Court should find as did the court in Schunk v Schunk 446 N.Y.S 2d 672

> "Pressure tactics to coerce settlement simply are not permissable" "in view of the pressure the trial court had exerted on the parties to reach settlement, trial court's order directing the parties to proceed with settlement after wife learned that she could not comply with the terms of the settlement had to be vacated and the stipulation rescinded. Order reversed".

Also, the Supreme Court should find as did the court in Mitchell v. Iowa Cab Co. 31 A.D. 2d 519, 294 N.Y.S. 2d 749 "The courts efforts should not serve as a lever to exert undue pressure on litigants to oblige them to settle their controversies without their day in court". Further, the

Supreme Court should contend, as did the court in Kothe v Smith 771 F2d 667 (2d. Cir. 1995), that "Although the law favors the voluntary settlement of civil suits...it does not sanction efforts by trial judges to effect settlements through coercion". It should find that

> "To penalize plaintiff by revoking a preference theretofore granted following her failure to accept an offer consequent on a pretrial exploration of the possibility of settlement constitutes a gross abuse of discretion". Wolff v. Laverne, Inc. 17 A.D. 2d 213, 233 N.Y.S 2d 555.

While the inherent power to dismiss for failure to abide by court orders clearly lies with Maryland's trial courts, "it is appropriately exercised only with restraint. Against this power...must be weighed the sound public policy of deciding cases on their merits". Hillig v CIR, 916 F.2d 171, 173-74 (4th Cir. 1990) (citation omitted). Judge Krauser could have imposed a less drastic sanction on Meade which would have been more appropriate and still allow him to have a trial by jury as he had requested from the beginning of his case. It would have been in the interest of justice to allow this case to proceed. "The functions of courts is to provide litigants with an opportunity to air their differences at an impartial trial according to the law". Wolff v. Laverne, Inc., 17 A.D. 2d 213, 214, 233 N.Y.S. 2d. 555. There is nothing on record or in Judge Krauser's order to show that she contemplated any sanctions but the most severe one.

> ". the harshness of the sanction imposed requires that the district judge first contemplate less drastic measure". ".a district court cannot impose the extreme sanction of dismissal unless the court judge first finds that a lesser sanction would not have served the interests of justice. A silent record is inadequate. We shall not infer that the district judge weighed alternative

> sanctions, he must have expressly considered them". S.E.C. v. First Houston Capital Resources Fund Inc., 979 F 2d 382, 383.

Judge Krauser did not provide factual findings or make conclusions that a lesser sanction would be insufficient in Meade's case.

Meade asks that the Supreme Court find that the circuit court abused its discretion when it failed to apply sanctions less severe than dismissal and further find that the Court of Special Appeals failed to clearly state sufficient reasons and grounds as to why it came to its decision to affirm.

> "Very sound reasons should be required to refuse a party the benefits of an appeal; and any interference with the right, wherever it exists, must be upon strong rounds and a clear manifestation on the part of the legislature, that they designed to withdraw it". Williams v. Willlams 7 Gil 302, at 304.

In the unreported opinion by the Court of Special Appeals, Judge Alpert cites Zdravkovich v Bell Atlantic-Trico Leasing Corp., 323 Md. 200, 208 (1991) (where both plaintiff and his counsel failed to appear for trial..) Meade's case differs from this case because in his case, the plaintiff's attorney was present when the case was called. Judge Alpert states that the court dismissed the case not because Meade was not present but because, due to Meade's absence, Kiefert could not prosecute the case. Judge Alpert, as did Judge Krauser, wrongfully concluded that Kiefert could not prosecute the case without Meade's presence at the beginning of the trial. Kiefert was prepared to proceed if the continuance was denied.

The Court of Special Appeals did not provide Meade with a fair proceeding where the judge's impartiality might be reasonably questioned. It appointed Judge Krauser, the circuit court judge who decided Meade's case, to hear some

cases in the Court of Special Appeals at the same time Meade's case (No.1562, September Term, 1997) was before them. The reported opinion in the Court of Special Appeals of Maryland of the case Jacklyn Kay Heineman, et al. v. Julie W. Bright, et al. (No. 1557, September Term, 1997) was written by her. One of the judges who worked with her, Judge Davis, was present to decide Meade's appeal. This impaired the fairness of the proceedings and may have required the judge's recusal.

In summary, the courts should not take away a person's right to be heard and to reject a settlement if it only benefits the employer, Pep Boys, and its insurance co., Travelers, and does not fully compensate the injured party. There is a grave injustice in the Court's action, responding favorably to respondents' settlement and never allowing Meade to present his settlement offer. Meade was denied presenting his settlement on various occasions. The trial judge's main procedural function is to guarantee a "fair trial" not to settle cases. By forcing the respondents' settlement, the Court substantially helped the respondents and became partial to them. The court system is designed to guarantee just trials, which require the impartiality of the trial judge. We must see to it that corporations, such as Pep Boys, and insurance companies, such as Travelers, offer the injured party just reimbursement in Workmen's Compensation cases and not influence the court systems to force their unjust settlement offers or have their case dismissed without giving it to a jury. The public interest here is to see that the court system is not persuaded by either party in a litigation.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

A

ROBERT E. MEADE	*	IN THE
		COURT OF APPEALS
v.	*	
		OF MARYLAND
PEP BOYS, MANNY, MOE and JACK et al.	*	Petition Docket No. 438
	*	September Term, 1998 (No. 1562, Sept. Term, 1997, Court of Special Appeals)

ORDER

The Court having considered the motion for reconsideration, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby, denied.

/s/ Robert M. Bell
Chief Judge

Date: JAN 14 1999

ROBERT E. MEADE	*	IN THE
		COURT OF APPEALS
v.	*	
		OF MARYLAND
PEP BOYS, MANNY, MOE and JACK et al.	*	Petition Docket No. 438
	*	September Term, 1998 (No. 1562, Sept. Term, 1997, Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the motion to stay the enforcement of the mandate, the supplements,and the answers filed thereto, in the above entitled case, it is reconsideration , in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition, motion and supplements be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

Date: NOV 13 1998

C

MANDATE

Court of Special Appeals

No. 1562, September Term, 1997

Robert E. Meade
vs.
Pep Boys Manny Moe & Jack, Inc. et al.

JUDGMENT: June 8, 1998:Unreported Opinion by Alpert, J.
Judgment affirmed; appellant to pay the costs.

July 8, 1998: Motion for Reconsideration
filed by appellant.

September 1, 1998:Motion for
Reconsideration denied.

September 2, 1998: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for PRINCE GEORGE'S COUNTY
CAL9405930

Record	60.00
Stenographer Costs	.100.00
Total	160.00 *

In Court of Special Appeals:

Filing Record on Appeal	50.00
Printing Brief for Appellant	75.60
Portion of Record Extract—Apellant	424.80
Total	550.40
Printing Brief for Appellee	136.80
* Total*	136.80

September 98 Leslie D. Gradet

D

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1562

September Term, 1997

ROBERT E. MEADE

v.

PEP BOYS, MANNY, MOE & JACK, INC., et al.

Davis,
Byrnes,
Alpert, Paul E.
(Ret., specially assigned),
JJ.

Opinion by Alpert, J.

Filed: June 8, 1998

#CAL9405930

In this appeal, appellant Robert E. Meade attempts to resurrect his workers' compensation claim against appellees Pep Boys, Manny, Moe, & Jack, Inc. and Travelers Indemnity Company of Illinois. The Workers'Compensation Commission denied Meade's claim, and the Circuit Court for Prince George's County dismissed, with prejudice, his appeal from that denial. On appeal to this Court, Meade argues, in essence, that:

> The trial court erred in dismissing his appeal on the basis that he did not personally appear for trial, since his attorney did appear.

We find no merit in this argument and shall affirm the judgment of the trial court.

FACTS

The record reflects that, just after the case was called on September 9, 1996, Meade's trial counsel, Stephen H. Kiefert, stated: "The plaintiff is moving to continue at this time." Kiefert explained that Meade

> works for the Defense Department. His is tied up with this Iraq business. He's been working around

> the clock at a place he can't tell me about doing what he can't tell me about. They've been sleeping on cots and ordering pizzas. He can't be here for national security reasons. He's been ordered to stay there.
>
> I got a phone message – I checked my messages this morning. He was home between 8:00 and 9:00 last night. They let him go home to shower and change occasionally, but other than that, for national security reasons, he has been ordered not to be here. All leaves have been canceled.

Kiefert added: "I'm not allowed to have his phone number so I can't call him at work."

The court heard argument from defense counsel to the effect that Meade had already requested and been granted several continuances for different reasons and that he had failed to appear for a settlement conference several days before trial despite a court order that he do so. Defense counsel pointed out that Meade had rejected a settlement offer presented to Kiefert at the conference even though the offer was "basically consistent with the demand. . ." The court then denied the request for a continuance. It told Kiefert: "I'm telling you he has failed to appear today. He's

had two prior continuances in this case. I cannot grant a third continuance without an affidavit saying it is for national security reasons." [1]

After further discussion with counsel for both parties regarding the proposed settlement and Meade's reasons for rejecting it, the court stated:

> I will tell you what I am going to do. I will put this on a 30 days disposition. If you do not have a disposition in 30 days, you have - you either have him sign {the proposed settlement} or the case will be dismissed for his failure to appear. That's it. That's it. His demand was for $10,000. This is in excess of that.

The court added:

> Now, I will leave it open for settlement only. If you all renegotiate on some fine points about this thing on the outstanding medicals as being not taken care of and if that means you come down a fraction on the other costs, then that's how you work it but I don't know. You all have to negotiate this.

Meade did not accept the settlement offer within 30 days and the appellees filed a written motion to dismiss the case. On January 9, 1997, a hearing was held and both Meade and Kiefert were present. The court offered Meade

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[1] See Md. Rule 2-508 (c) ("A motion for a continuance on the ground that a necessary witness is absent shall be supported by an affidavit. .").

the option of accepting the settlement offer at that time, but Meade rejected it. In accordance with Kiefert's explanation on September 9, 1996, Meade told the court that he failed to appear for the pre-trial settlement conference and the trial itself because "{w}e had an international crisis at that time {that} I'm not supposed to discuss and I couldn't make it." Meade explained that he was nevertheless in contact with Kiefert during the week before trial. The court then dismissed the case with prejudice. It signed an order stating:

> This case having been called for trial on September 9, 1996, and the Claimant Robert Meade, having failed to appear, and having failed to comply with this Court's instructions on September 9, 1996 {to attempt to reach a settlement,}
>
> It is this 9th day of January, 1997 ORDERED that the Motion to Dismiss filed by the Employer and Insurer be, and it is hereby GRANTED, and the Claimant's appeal from the decision of the Workers' Compensation Commission is dismissed.

Meade filed motions for reconsideration and for a new trial, and a hearing was held on May 22, 1997. This time, Meade appeared pro se. Significantly, in denying the

motions the court explained that it had dismissed the case "for failure to prosecute, in other words, for the failure of the Plaintiff to appear for trial."

DISCUSSION

In arguing that the trial court dismissed his appeal simply because he was not personally present, Meade mischaracterizes the record. Despite the court's references, at the various court proceedings and in the order of dismissal, to Meade's failure to appear for trial on September 9, 1996, it is clear that the court dismissed the case not because Meade was not present but because, due to Meade's absence, Kiefert was unable to prosecute the case. At the hearing on Meade's motions for reconsideration and for a new trial, the court expressly clarified that, when it referred to Meade's failure to appear, it was in fact referring to his inability to prosecute. While a better choice of shorthand might have been advisable, the court's shorthand was not unduly confusing under the circumstances.

Because of his mischaracterization of the record,

Meade's brief focuses on the propriety of dismissing a case when the plaintiff is absent but his or her attorney is not. Meade does not question whether the trial court erred in refusing to grant the continuance or in determining that Meade's counsel could not prosecute the case. Consequently, those arguments are not before this Court. See generally Md. Rule 8-504 (a).

Any such arguments would be without merit, moreover. "{T}he granting of a continuance is in the discretion of the court, and will not be reviewed on appeal unless the court acts arbitrarily and prejudicially." Dart Drug Corp. v. Hechinger Co., 272 Md. 15, 28 (1974). When a continuance is requested because of an absent witness – in this case, Meade - - Md. Rule 2-508(c) requires that an affidavit be filed to explain, essentially, the reason for the witness' absence and the importance of his testimony. Meade failed to supply such an affidavit and failed to so much as suggest that it was not possible for him to do so.

Absent the granting of a continuance, it was

incumbent upon Meade's counsel, Kiefert, to prosecute the case. Cf. Zdravkovich v. Bell Atlantic-Trico Leasing Corp., 323 Md. 200, 208 (1991) (where both plaintiff and his counsel failed to appear for trial, court could properly grant judgment in favor of defendant based on plaintiff's failure to prove a prima facie case). There is no dispute that, in appealing from the decision of the Worker's Compensation Commission, Meade was seeking an essential trial de novo. See generally Md. Labor. & Empl. Code Ann. S 9-745 (1991 Repl. Vol.); S.B. Thomas, Inc. v. Thompson, 114 Md. App. 357, 364-67 (1997); Chadderton v. M.A. Bongivonni, Inc., 101 Md. App. 472, 480-81 (1994). Although Meade asserts on appeal that Kiefert was prepared to proceed in his absence, his attorney made no such representation to the court below. Kiefert flatly informed the court that a continuance was necessary because Meade could not possibly be present - indeed, Kiefert did not even have a telephone number so that he could contact Meade. No witnesses for Meade were present when the case was called

and, upon the court's refusal to grant a continuance, Kiefert gave no indication that he had evidence to present other than Meade's testimony. Under the circumstances, the court properly dismissed the case and entered judgement in favor of the defendants. [2]

Meade's suggestion that the court attempted to strong-arm him into settling the case by making him choose between settlement and dismissal is, at best, disingenuous. By giving Meade until January 9, 1997 to reach a settlement when it could have finally disposed of the matter on September 6, 1996, the court, in an apparent attempt to achieve what it hoped would be a just result, did far more for Meade than was required. Far from attempting to strong-arm Meade, the court attempted to help him.

Meade complains that Kiefert falsely informed him that his presence was not necessary on September 9,

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[2] Instead of dismissing the case once it became obvious that Meade would not be able to prosecute it, the court could have permitted defense counsel to move for judgment under Md. Rule 2-519, then granted the motion. Cf. Zdravkovich, 323 Md. at 208. We need not concern ourselves with which course of action would have been the more correct one, as we are satisfied that the end result of the dismissal - - entry of judgment in favor of the defendants - - was proper.

1996, falsely informed the court on that date that Meade was unavailable, then falsely informed Meade that a continuance had been granted and failed to inform him of the outstanding settlement offer and pending dismissal. Meade argues that he "should not be penalized for the laxity and irresponsibility of his attorney." To the contrary, "{t}he actions of an attorney within the scope of his employment are binding upon his client under the ordinary principles of agency," Salisbury Beauty Schools v. State Board of Cosmetologists, 268 Md. 32, 45 (1973). "{T}here is a prima facie presumption that an attorney has authority to bind his client by his actions relating to the conduct of litigation. Secor v. Brown, 221 Md. 119, 123 (1959). See generally Md. Rule 1-331.

Meade's complaints that Kiefert falsely informed him that his presence was not necessary on September 9, 1996, and falsely informed the court that Meade was not available, first appeared in his motions for reconsideration and for a new trial, which apparently were filed pursuant to

Md. Rules 2-533 and 2-534. The resolution of such motions are within the sound discretion of the trial court and will not be disturbed absent a showing of abuse. See I.O.A. Leasing Corp. v. Merle Thomas Corp., 260 Md. 243, 249 (1971) (Rule 2-533); Friends of the Ridge v. Baltimore Gas and Electric Co., 120 Md. 444, 490 (1998) (Rule 2-534). The trial court denied the motions and we perceive no abuse. We remind Meade that at the January 9, 1997 hearing he personally reiterated what Kiefert has said on September 9, 1996, to the effect that he could not be present on September 9 for national security reasons.

Meade's contention that Kiefert falsely informed him that a continuance had been granted was first raised at the hearing on January 9, 1996. Assuming arguendo that the trial court accepted Meade's contention as truthful, there is no reason to believe that the false information affected the outcome of the case. The trial court gave Meade the option of accepting the settlement offer on January 9 and he rejected it. At this point, any complaint that Meade has

against his trial counsel is between Meade and his counsel alone. See generally Prande v. Bell, 105 Md. App. 636, 655 n.6 (1995) ("{A} cause of action for negligent misrepresentation may be . . . asserted against an attorney for legal malpractice").

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.

E

ROBERT E. MEADE Claimant	*	IN THE
		CIRCUIT COURT
v.	*	
		FOR PRINCE
PEP BOYS Employer	*	GEORGE'S COUNTY
And	*	(Appeal from Workers' Compensation
	*	Commission Claim No.:
TRAVELERS INDEMNITY CO. OF ILLINOIS		B-300549)
Insurer	*	Case No.: CAL94-5930

* * * * * * * * *

ORDER

It is this 22nd day of May, 1997, ORDERED that the Motion to Reconsider filed by the Claimant is hereby denied.

/s/_____
Judge
Circuit Court for Prince George's County

5-27-97

F

ROBERT E. MEADE Claimant	*	IN THE
		CIRCUIT COURT
v.	*	
		FOR PRINCE
PEP BOYS Employer	*	GEORGE'S COUNTY
And	*	(Appeal from Workers' Compensation
	*	Commission Claim No.:
TRAVELERS INDEMNITY CO. OF ILLINOIS Insurer	*	B-300549) Case No.: CAL94-5930

* * * * * * * * *

ORDER

This case having been called for trial on September 9, 1996, and the Claimant, Robert E. Meade, having failed to appear, and having further failed to comply with this Court's instructions on September 9, 1996,

It is this 9th day of January, 1997, ORDERED that the Motion to Dismiss filed by the Employer and Insurer be, and it is hereby GRANTED, and the Claimant's appeal from the decision of the Worker's Commission is dismissed. It is further ORDERED that the Claimant be assessed all costs of this Court.

/s/_____
Judge
1-14-97 Circuit Court for Prince George's County

WORKERS' COMPENSATION COMMISSION
6 NORTH LIBERTY STREET
BALTIMORE, MARYLAND 21201-3785

CLAIM NO B300549

CLAIM FOR COMPENSATION
CLAIMANT ROBERT E. MEADE DISALLOWED

EMPLOYER PEP BOYS MANNY MOE & JACK INC

INSURER TRAVELERS INDEMNITY CO OF ILL

Hearing was held in the above claim at Baltimore, Maryland on March 1, 1994, on the following issues:

1. Did the employee sustain an accidental personal injury arising out of and in the course of employment?

2. Causal connection - back.

The Commission finds on the issues presented that the claimant did not sustain an accidental injury arising out of and in the course of employment as alleged to have occurred on 9/12/93; and finds that the back condition is not the result of the alleged accidental injury, and the Commission will disallow the claim filed herein.

It is, therefore, this 16th day of March, 1994, by the Workers' Compensation Commission ORDERED that the claim filed in the above case by the above-named claimant, against the above-named employer and the above-named insurer, be and the same is hereby disallowed.

CHARLES J. KRYSIAK
COMMISSIONER
1a

ATTEST
LOURENNA E. FISHER
SECRETARY